



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO- 172831

PRELIMINARY RECITALS

On March 14, 2016, the above petitioner filed a hearing request under Wis. Admin. Code, § HA 3.01, to challenge a decision by the Pierce County Department of Human Services regarding FoodShare benefits (FS). The hearing was held on June 23, 2016, at Ellsworth, Wisconsin.

The issue for determination is whether the petitioner's income exceeds the FoodShare limit.

There appeared at that place and time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street,
Room 651
Madison, WI 53703

[REDACTED]

Pierce County Department of Human
Services
412 West Kinne Street
PO Box 670
Ellsworth, WI 54011

ADMINISTRATIVE LAW JUDGE:

Michael O'Brien

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Pierce County.
2. The petitioner applied for FoodShare on January 19, 2016. The department denied her application on February 22, 2016, after determining that her income exceeded the program's gross income limit.
3. Two hundred percent of the federal poverty level for a single person is \$1,962. *FoodShare Wisconsin Handbook*, § 8.1.1.
4. The petitioner earns \$1,698.12 per month.
5. The petitioner pays \$695 per month in rent.

DISCUSSION

The department denied FoodShare to the petitioner after determining that her gross income exceeded the program's income limit. She contends that the department overstated that income. If her income is within the program's gross income limit, how much, if any, FoodShare she receives will depend upon her net income..

The FoodShare program's gross income limit is 200% of the federal poverty level. *FoodShare Wisconsin Handbook*, §§ 4.2.1.1. and 8.1.1.1. The gross income limit for a single person such as the petitioner is \$1,962. *FoodShare Wisconsin Handbook*, § 8.1.1. Gross income includes all income from any source unless 7 CFR § 273.9(c) excludes it. 7 CFR § 273.9(b). Net income is determined after subtracting those deductions—and only those deductions—found in 7 CFR § 273.9(d) from gross income.

When the petitioner applied for FoodShare she received income from four employers: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and the [REDACTED], [REDACTED], [REDACTED]. The department based her eligibility on pay stubs provided by February 19, 2016. According to those stubs, she earned \$420 on January 29, 2016, and \$525 on February 12, 2016, from [REDACTED]; \$300 on January 7, 2016, and \$306.25 on January 21, 2016, from [REDACTED]; \$345 on January 18, 2016, and \$130 on February 8, 2016, from [REDACTED]; and \$390 on January 7, 2016, from [REDACTED], [REDACTED] and [REDACTED] pay her biweekly; [REDACTED] and [REDACTED] pay her once a month. Biweekly income is multiplied by 2.15 to obtain monthly income. This is based upon the fact that dividing the 52 weeks in a year by the 12 months equals 4.3 weeks per month and those paid every other week receive an average of 2.15 paychecks per month. The agency states that calculating these various sources of income equals \$2,295.09, which exceeds the \$1,962 limit by over \$300.

The flaw in the department's calculation is that although the petitioner does not work each job every pay period, it divided her income in each job by the number of paychecks she received rather than by the total period covered by all of her work. A simple example points out the problem with doing this. If she had two jobs throughout January and February, worked entirely at one of those jobs in January and entirely at the other in February, earning \$1,000 at each, her average monthly income would be \$1,000. But if her average monthly income for each job were determined by dividing her pay in each job by the number of checks she received at each job, the result would be that she averaged \$1,000 a month at each job, giving her a monthly income of \$2,000 rather than \$1,000. Calculating the petitioner's income is more complex than this, but the basic premise holds: It is necessary to base her income for each job on the total period involved in determining her income rather than just the particular times she got paid to do those jobs.

The petitioner submitted pay stubs for January and February 2016. This period does not exactly match the department's period because the department based its decision on information received by February 19, 2016. I will accept that the petitioner has accurately stated her income and will use the entire two-month period to determine her average income because longer periods generally give a more accurate picture of

inconsistent income. To obtain monthly average income of the employment for which she was paid once a month, I will divide the total income received in the two months by two. To obtain the monthly average income of the employment for which she was paid biweekly, I will divide the total income by four to reflect the total amount of bimonthly pay periods in those two months and multiply that result by 2.15.

Besides the paychecks already listed above, [REDACTED] paid the petitioner \$112.50 on February 6, 2016, [REDACTED] paid her \$226 on February 26, 2016, and [REDACTED] paid her \$518.75 on February 4, 2016. Her total combined income from her two sources where she was paid once a month was \$977.50, or \$488.75 per month. Her total income from the two sources where she was paid biweekly was \$2,250. Dividing this by four and then multiplying the dividend by two gives \$1,209.37. Her total gross monthly income is \$1,698.12. Because this is within the gross income limit it is necessary to determine what, if any, allotment her net income entitles her to.

She is entitled to the \$155 standard deduction allowed for households with up to three members. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). She is also entitled to an earned income deduction equal to 20% of her \$1,698.12 earned income, or \$339.62. *See* 7 CFR § 273.9(d)(2).

The last deduction she is entitled to is the shelter deduction, which equals the amount that housing costs, including a standard utility allowance currently set at \$458, exceed 50% of the net income remaining after all other deductions are subtracted from gross income. *FoodShare Wisconsin Handbook*, § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii); *FoodShare Wisconsin Handbook*, § 8.1.3. The petitioner's housing costs consist of her \$695 rent plus the \$455 standard utility deduction, or \$1,150. Because there is a standard utility allowance, her actual utility costs are not considered. Deducting the \$155 standard allowance and the \$339.62 earned income deduction from \$1,698.12 gross income, leaves her with \$1,193.50. Half of this is \$596.75. Her \$1,150 in shelter costs exceed this amount by \$553.25. This is her shelter deduction. Subtracting all the deductions she is allowed—the \$553.25 shelter deduction, the \$155 standard deduction, and the \$339.62 earned income deduction—from her \$1,698.12 gross income leaves her with \$640.25 in countable net income. The FoodShare allotment for a one-person household, the size of the petitioner's, with this income is \$16. *FoodShare Wisconsin Handbook*, § 8.1.2.

I note to the petitioner that if her income increases she must report this within 10 days to the county agency because if she becomes ineligible for the program she will have to repay any benefits she is not entitled to.

CONCLUSIONS OF LAW

1. The petitioner's gross income is within the FoodShare program's limit.
2. The petitioner's net income entitles her to \$16 per month in FoodShare benefits.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to ensure that the petitioner receives \$16 per month in FoodShare benefits retroactive to January 20, 2016. The agency shall ensure that the petitioner is issued a supplemental allotment for any retroactive benefits she is due.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

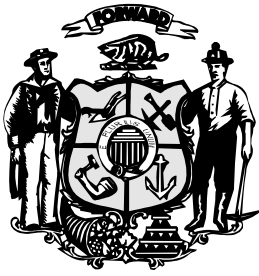
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of July, 2016

\s _____
Michael O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 7, 2016.

Pierce County Department of Human Services
Division of Health Care Access and Accountability